

WISHA REGIONAL DIRECTIVE

Department of Labor and Industries

Division of Occupational Safety and Health

1.90 Handling WISHA Complaints By L&I Employees

Date Issued: July 6, 2006

I. Background

The Department of Labor and Industries (L&I), like other employers operating in the state of Washington, is subject to Title 49.17 RCW, known as the Washington Industrial Safety and Health Act (WISHA). RCW 49.17.110 gives employees and their representatives the right to file complaints alleging that their employer has violated one or more WISHA standards.

These provisions present a unique challenge to L&I when responding to safety and/or health complaints about L&I's own operations. To meet this challenge and to ensure both L&I employees and the agency as an employer receive their full rights under WISHA, this WISHA Regional Directive provides a specific complaint handling process to address the unique situation presented by such complaints.

II. Scope and Application

This WRD replaces and rescinds WISHA Interim Operations Memorandum #97-7-B, issued July 25, 1997.

III. Operations Protocols

DOSH staff must adhere to the following complaint handling policy whenever a WISHA complaint about L&I as an employer is received:

1. For purposes of handling complaints about L&I as an employer, the Compliance Administrator will serve as the primary enforcement contact and will perform the functions normally performed by the DOSH Supervisor.

The Compliance Administrator role (and the role played by other DOSH Services staff who may be involved in the appeal process) is distinct and separate from the role played by the Office of Human Resources (OHR), which represents L&I's interests as the employer.

2. All WISHA safety or health complaints made by an L&I employee must immediately be faxed to Lorne Sanford, Compliance Administrator, at FAX (360) 902-5438. They must not be shared with staff outside of DOSH (including managers with responsibility for both DOSH and non-DOSH activities) who are not directly involved in receiving the complaint.

Complaints originally received in regional offices must be reduced to writing and faxed to Tumwater with the original written complaint forwarded to:

Lorne Sanford
DOSH Compliance Administration
Department of Labor and Industries
P.O. Box 44650
Olympia, WA 98504- 4650

3. Upon receipt by the Compliance Administrator, the complaint will be reviewed for content and classification and appropriate complaint tracking will be assured.
4. Following classification, the complaint will be handled by letter, phone or fax or with an onsite inspection. The Compliance Administrator shall be responsible for use of the letter and/or phone or fax method. If an onsite inspection is necessary, the Compliance Administrator will coordinate assignment of a safety inspector or hygienist as needed, depending on the scope of the complaint and the necessary inspection action.
5. Due to the exceptional nature of the situation, Compliance Management and other DOSH staff involved in handling the complaint must take special care to protect complainant confidentiality in accordance with the statute. The Compliance Administrator shall be responsible for ensuring that working files and other records are kept in a secure location to avoid disclosure.
6. OHR has been designated by the agency as the employer representative for all DOSH activities. All correspondence with the "employer" must be directed to OHR. ***Note:** This provision relates only to contact with L&I as the "employer." It does not restrict contact by assigned DOSH staff with complainant(s) or employee representative(s).*
7. Any needed inspection must be assigned to an inspector or industrial hygienist not located in the region addressed by the complaint. If the complaint involves statewide activity, the inspection staff must be selected as necessary to minimize any appearance of conflict of interest.
8. Compliance Administration staff shall be responsible for the day-to-day monitoring of the complaint handling process and shall be responsible for case file review including "supervisory review" and final sign-off.

9. No closing conference may be held with L&I until a preliminary review of the inspection file has been completed by the Compliance Administrator. It is intended that all issues, including abatement dates, be discussed with the employer representative(s) prior to a citation so that resolution, and any resulting employee protection, can be obtained as quickly as possible.
10. If a WISHA complaint inspection is conducted at L&I, the enforcement officer assigned must, with the exception of those issues specifically addressed by this memo, follow investigation/inspection protocol as described in the DOSH Compliance Manual. It is important to preserve the statutory rights for the complainant as well as for L&I as the employer.
11. If an appeal is filed, it must be referred to the DOSH Re-assumptions and Appeals Program Manager for review and handling. He or she must consult with the Appeals Manager regarding the next steps. In no case may the appeal be assigned to a Regional Hearings Office; the DOSH Appeals Manager must directly conduct the re-assumption and render a decision. Prior to a decision, both the Assistant Director for DOSH and the Assistant Director for Human Resources must be provided an opportunity for discussion.
12. If a satisfactory re-assumption settlement cannot be reached, the Assistant Director for DOSH will refer the appeal to the Director who will make the final decision.
13. At all stages of a WISHA complaint investigation/inspection, the staff involved must ensure that an opportunity for participation is offered to the appropriate union representatives.
14. As necessary, follow-up and assurance of abatement for any citations issued will be the responsibility of Compliance Administration.

Approved: _____
Stephen M. Cant, CIH, Assistant Director
Department of Labor and Industries
Division of Occupational Safety and Health